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Situation of human rights in the Palestinian territories occupied since 1967*

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, submitted in accordance with Human Rights Council resolution 5/1.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

Summary

The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, hereby submits his first report to the General Assembly. The report is based primarily on information provided by victims, witnesses, civil society representatives, United Nations representatives and Palestinian officials in Amman, in connection with the mission of the Special Rapporteur to the region in July 2016. The report addresses a number of concerns pertaining to the situation of human rights in the West Bank, including East Jerusalem, and in Gaza.

I. Introduction

1. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, was appointed on 24 March 2016, in accordance with Commission on Human Rights resolution 1993/2 and Human Rights Council resolution 5/1. He assumed his functions on 1 May 2016. He is the seventh person to assume the mandate.

2. The present report is the first submitted by the Special Rapporteur. He would like to draw attention to the fact that, while he stands ready to conduct a mission to the Occupied Palestinian Territory, permission to do so has not been granted by the Israeli authorities. After assuming his position as mandate holder, the Special Rapporteur made a formal request, on 3 June 2016, to both the Israeli and Palestinian authorities for permission to visit the Occupied Palestinian Territory. As of the time of writing of the present report, no reply had been received from the Israeli authorities. The Special Rapporteur notes that the two preceding mandate holders were similarly not granted access. The Special Rapporteur met the Permanent Observer of the State of Palestine to the United Nations on 7 June 2016, during his first visit to Geneva. He also requested a meeting with the Permanent Representative of Israel, but did not receive a response. This pattern of non-cooperation with the mandate is a serious concern. A full and comprehensive understanding of the situation based on first-hand observation would be extremely beneficial to the work of a Special Rapporteur.[1]

3. The report is based primarily on written submissions as well as consultations with civil society representatives, victims, witnesses, Palestinian government officials, and United Nations representatives held in Amman, Jordan during the Special Rapporteur's first mission to the region in July 2016.

4. The mandate of the Special Rapporteur, as set out by the Commission on Human Rights, is to investigate Israel's violations of the principles and bases of international law, international humanitarian law and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian territories occupied by Israel since 1967.[2] With this in mind, the present report focuses on the violations committed by Israel in the context of nearly 50 years of occupation. Israel, as the Occupying Power, has a responsibility to ensure the respect for and protection of the rights of Palestinians within its control.[3] The mandate of the Special Rapporteur thus focuses on the responsibilities of the Occupying Power, although he notes that human rights violations by any State party or non-state organization are deplorable and will only hinder the prospects for peace.

5. The Special Rapporteur wishes to express his appreciation for the full cooperation with his mandate extended by the Government of the State of Palestine. The Special Rapporteur also wishes to extend his thanks to all those who travelled to Amman to meet him, and to those who were unable to travel but made written or

[1] A/HRC/23/21, para. 1.

[2] See Commission on Human Rights resolution 1993/2.

[3] Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949 (Fourth Geneva Convention), art. 47.

oral submissions. The Special Rapporteur acknowledges the essential work being carried by those groups in their attempts to create an environment in which human rights are respected and to ensure that violations of human rights and humanitarian law are not committed with impunity and without witnesses. The Special Rapporteur will support such work as much as possible.

6. The Special Rapporteur would like to note that several groups were unable to travel to Amman to meet him, owing to travel restrictions imposed by the Israeli authorities. This was particularly the case with individuals coming from Gaza, and all groups based in Gaza were consulted by videoconference as a result.

7. The report is structured in two parts. It first provides an overview of the situation in the Occupied Palestinian Territory, including East Jerusalem. The discussion highlights current human rights concerns while also aiming to frame the current situation in the broader context of nearly 50 years of occupation. Thus, the discussion is not limited to events within a specific time period, but an emphasis will be placed on issues that were highlighted as particularly critical at the time of writing, on the basis of conversations with and input from individuals and organizations during the Special Rapporteur's mission in July 2016.

8. The second part of the report examines the situation in the Occupied Palestinian Territory through the lens of the right to development, with a focus on development as a human right, and the impact of human rights violations on development in the Occupied Palestinian Territory.

II. The current human rights situation

9. A series of worrying events and trends have emerged since the upsurge in violence that began in October 2015 in the West Bank, including East Jerusalem. During the escalation of violence, more than 230 Palestinians and at least 32 Israelis were killed over the course of 2015 and 2016 in the context of demonstrations by Palestinians, as well as Palestinian attacks or alleged attacks, and the often lethal response of the Israeli security forces.[4] While the number of violent incidents has declined in recent months,[5] the continued use of administrative detention, punitive demolitions, movement restrictions and other measures continue to negatively affect the human rights of the Palestinian people on a continuous basis.

10. Violent attacks of any kind by anyone are unacceptable. The fact that the attacks and alleged attacks by Palestinians against Israelis are, not infrequently, responded to with disproportionate and deadly force only compounds the violence. Many of the attacks and alleged attacks have been committed by minors, which is particularly worrying because of the hopelessness it seems to represent. In a striking number of meetings over the course of the Special Rapporteur's mission, those working in the Occupied Palestinian Territory consistently noted a sense of desolation and desperation among children manifesting itself not only in violent

[4] Office for the Coordination of Humanitarian Affairs, Protection of civilians weekly report, 16 to 22 August 2016. Available from www.ochaopt.org/content/protection-civilians-weekly-report-16-22-august-2016.

[5] Gili Cohen, "After six months of terror wave, attacks decreasing, says Israeli army", *Haaretz*, 1 April 2016. Available from www.haaretz.com/israel-news/.premium-1.712123.

outbursts but also in psychological and physical ailments such as bed-wetting, anxiety and depression. The plight of children is often a barometer for the gravity of a situation. Sadly, in the present circumstances, children born today in the Occupied Palestinian Territory do not enjoy hope for a peaceful future.

A. Violence and lack of accountability

11. The number of casualties of the escalation in violence witnessed in 2015 was the highest in the West Bank since 2005 among both Israelis and Palestinians.[6] The large majority of those killed have been Palestinians — often as a result of disproportionate use of deadly force by Israeli security forces. According to civil society representatives, of those killed in the West Bank between October 2015 and January 2016, 88 were Palestinians whom the Israeli authorities suspected were responsible for attacks or attempted attacks. Two concerns arise with respect to these cases. First, that they occurred at all — that lethal force is used so often, and frequently without justification.[7] Second, the fact that, in a majority of cases in which a member of the Israeli security forces used lethal force, no investigation was conducted or if an investigation was conducted, it was closed without any action being taken against the perpetrator.

12. In several documented cases, it is clear those killed had not posed the level of threat that, according to international standards, would merit the use of deadly force. According to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,[8] weapons and lethal force should be used only as a last resort.[9] Human rights organizations have documented a number of cases in which it is clear that this threshold was not met.[10]

13. One of the most emblematic examples, widely reported in the media, is the killing of Abd al-Fatah al-Sharif in Hebron on 24 March 2016. Al-Sharif allegedly stabbed and wounded an Israeli soldier, and was later shot and killed by an Israeli soldier while lying immobile and wounded on the ground.[11] The incident was caught on video, and the footage, which was shared on YouTube by the Israeli human rights organization B'Tselem, made international headlines. The Special Rapporteur on

[6] Office for the Coordination of Humanitarian Affairs, "Israel opened 24 criminal investigations into the killing and injury of Palestinians since October 2015, leading to one indictment", Monthly Humanitarian Bulletin (July 2016). Available from www.ochaopt.org/content/israel-opened-24-criminal-investigations-killing-and-injury-palestinians-october-2015.

[7] See Office of the United Nations High Commissioner for Human Rights (OHCHR), "Basic principles on the use of force and firearms by law enforcement officials". Available from www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx.

[8] See *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.

[9] See OHCHR, "Basic principles on the use of force and firearms by law enforcement officials".

[10] B'Tselem, "Unjustified use of lethal force and execution of Palestinians who stabbed or were suspected of attempted stabbings", 16 December 2015. Available from www.btselem.org/gunfire/20151216_cases_of_unjustified_gunfire_and_executions.

[11] See www.youtube.com/watch?v=S8WK2TgruMo.

extrajudicial, arbitrary or summary executions noted that, "the images shown carry all the signs of a clear case of an extrajudicial execution".[12]

14. This is only one example of what appears to be an alarming trend. As noted in a statement by the spokesperson for the United Nations High Commissioner for Human Rights, "this is not the first incident to be captured on video that raises concerns of excessive use of force".[13] These few visually documented cases do not represent the true scale of the problem. Further, the recently publicized Israeli open-fire regulations, updated in December 2015, lower the threshold for use of deadly force to a level that is in contravention of international standards.[14] The Basic Principles on the Use of Force and Firearms specify that firearms should be used only in cases of "imminent threat of death or serious injury", while the new open-fire regulations allow the use of live ammunition against an individual who "appears to be throwing or is about to throw" firebombs, fireworks or stones. This change suggests that the government seeks to create an environment in which use of deadly force is questioned less and accepted more. Under such conditions, the use of excessive force is likely to occur with greater frequency.

15. Further compounding the problem is the fact that in a majority of the cases, there has been little attempt to establish accountability. Between October 2015 and June 2016, the Israeli authorities opened 24 criminal investigations into incidents in which Israeli security forces' actions led to the injury or death of Palestinians.[15] So far, only the killing of Abd al-Fatah al-Sharif in Hebron has resulted in the indictment and prosecution of a soldier. The trial is ongoing and Israel's Defense Minister, Avigdor Lieberman, reportedly said, in relation to the case, that Israel "... cannot reach a situation where a soldier must ask for a lawyer before going on a mission" and emphasized that individuals are innocent until proven guilty.[16] Such statements implicitly encourage leniency for soldiers who use deadly force against individuals, which undermines efforts to ensure accountability.

16. The problem of the lack of accountability is far from new. One striking recent illustration of this fact is the announcement by the human rights organization B'Tselem in May 2016 that it will no longer engage with Israel's military law enforcement mechanism.[17] The organization came to the conclusion, after 25 years

[12] OHCHR, "Hebron killing: 'all the signs of an extrajudicial execution' — United Nations expert expresses outrage", 30 March, 2016. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18544&LangID=E.

[13] OHCHR, "Comment by the spokesperson for the United Nations High Commissioner for Human Rights, Rupert Colville, on the killing of a Palestinian man in Hebron", 30 March 2016. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18540&LangID=E.

[14] "Israeli police reveal new open-fire regulations in response to Adalah's court petition", Adalah, 5 July 2016. Available from www.adalah.org/en/content/view/8845.

[15] Office for the Coordination of Humanitarian Affairs, "Israel opened 24 criminal investigations into the killing and injury of Palestinians since October 2015, leading to one indictment".

[16] Isabel Kershner, "Israeli military investigating soldier's killing of unarmed Palestinian", *New York Times*, 29 August 2016. Available from www.nytimes.com/2016/08/30/world/middleeast/israeli-military-investigating-soldiers-killing-of-unarmed-palestinian.html.

[17] B'Tselem, *The Occupation's Fig Leaf: Israel's Military Law Enforcement System as a Whitewash Mechanism* (May 2016). Available from www.btselem.org/publications/summaries/201605_occupations_fig_leaf.

of work, that "there is no longer any point in pursuing justice and defending human rights by working with a system whose real function is measured by its ability to continue to successfully cover up unlawful acts and protect perpetrators".[18] B'Tselem noted that, of 739 cases the organization filed with the Military Advocate General since 1989, no investigation had been launched in 182 cases, while in nearly half the cases (343), the investigation was closed with no further action. In the course of 25 years, only 25 cases led to charges being brought against implicated soldiers. In early 2015, the human rights organization Yesh Din published statistics related to indictments in 2014, noting that only 8 out of 229 investigations opened in 2014 resulted in indictments, and that in 2013 there were 199 investigations, which led to 9 indictments. Yesh Din, in interpreting the data, noted that it "reveals the deep, ongoing failure to conduct exhaustive investigations that lead to indictments. The result is near impunity from prosecution for IDF soldiers ...".[19]

17. The lack of accountability is a systemic and deeply ingrained issue. It helps to perpetuate a cycle of continued violence, as soldiers appear to act with impunity, with the message being sent that Palestinian lives do not matter, while the Palestinian population becomes both more fearful and more desperate.

B. Detention

18. Coinciding with the rise in violence is a rise in arrests and in the number of Palestinians in Israeli detention, including those in administrative detention. October 2015 saw a sharp increase in the number of Palestinians in detention, which continues to hold steady at levels not seen in nearly 10 years. As of the time of writing of the present report, according to data collected by B'Tselem and the human rights organization Addameer, there are more than 6,000 detainees currently held on alleged security grounds, as well as approximately 700 administrative detainees. The numbers are staggering and are suggestive of an overarching policy that aims to intimidate and significantly restrict the freedoms of Palestinians.[20]

Administrative detention

19. The rise in the number of administrative detainees is particularly concerning. Currently, approximately 700 Palestinians are being held on administrative detention orders.[21] This is the highest number of administrative detainees reported since 2008.[22] Detainees are often deprived of basic legal safeguards, as noted in 2016 by the Committee Against Torture in its review of the fifth periodic report of

[18] Ibid.

[19] Yesh Din, "December 2015 data sheet: law enforcement on IDF soldiers suspected of harming Palestinians — summary of 2014 data", 12 February 2015. Available from www.yesh-din.org/en/december-2015-data-sheet-law-enforcement-on-idf-soldiers-suspected-of-harming-palestinians-summary-of-2014-data/.

[20] A wide-ranging set of military regulations govern the arrest and detention of Palestinians living in the occupied Palestinian territory. See Addameer Prisoner Support and Human Rights Association, "Palestinian political prisoners in Israeli prisons", June 2016. Available from www.addameer.org/sites/default/files/briefings/general_briefing_paper_-_june_2016_1.pdf.

[21] Addameer, Statistics, August 2016. Available from www.addameer.org/statistics.

[22] B'Tselem, Statistics on administrative detention, updated 12 September 2016. Available from www.btselem.org/administrative_detention/statistics.

Israel, as they are held on secret evidence to which neither they nor their lawyers are granted access, and are neither charged nor tried.[23] Since administrative detention orders are indefinitely renewable, some human rights activists argue that the psychological anguish associated with this uncertainty could amount to torture.[24]

20. Israel's justification for its widespread use of administrative detention is that it is necessary for security reasons. The Israeli government has relied on article 78 of the Fourth Geneva Convention, which states that an Occupying Power "for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment". Internment in international law is defined as "the non-criminal detention of a person based on the serious threat that his or her activity poses to the security of the detaining authority in relation to an armed conflict".[25] This means that internment can only be used in non-criminal cases, and not as a substitute for a criminal conviction nor as a form of punishment.[26] The fact that administrative detention orders are often issued against individuals whom the Israeli government initially tried to charge with a crime but failed to do so, indicates that many of these arrests are in contravention of this provision.[27] According to the commentary to the Fourth Geneva Convention, this article should be read to apply only in very limited circumstances.[28] This is among the most serious measures that an Occupying Power can use with respect to the civilian population of an occupied territory.

21. Israel's practice of holding individuals on secret evidence is in clear violation of both international humanitarian law and international human rights law and far oversteps the use of "internment" as envisioned by the Fourth Geneva Convention. The Committee Against Torture, in its review of Israel, called on the State to end the practice of administrative detention, saying concerns exist because "detainees may be deprived of basic legal safeguards as, inter alia, they can be held in detention without charge indefinitely on the basis of secret evidence that is not made available to the detainee or to his/her lawyer".[23,29]

22. The case of Hasan Safadi, a journalist and the media coordinator for Addameer, an organization that works to protect and promote the rights of detainees, is a clear example of those failings of the Israeli system. Safadi was

[23] CAT/C/ISR/CO/5, para. 22.

[24] Addameer, "Induced Desperation: The Psychological Torture of Administrative Detention", 26 June 2016. Available from www.addameer.org/publications/induced-desperation-psychological-torture-administrative-detention.

[25] International Committee of the Red Cross, "Internment in armed conflict: basic rules and challenges", opinion paper, November 2014.

[26] See Commentary (1958) to article 78 of the Fourth Geneva Convention: "The persons subjected to these measures are not, in theory, involved in the struggle. The precautions taken with regard to them cannot, therefore, be in the nature of a punishment."

[27] See, for example, Amnesty International, "Israel/OPT: human rights defender administratively detained: Hasan Ghassan Ghaleb Safadi", 4 July 2016. Available from www.amnesty.org/en/documents/mde15/4376/2016/en/.

[28] See https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=D794403E436F0823C12563CD0042CF9A.

[29] In article 43 of the Fourth Geneva Convention, it is noted that anyone placed in internment "shall be entitled to have such action reconsidered as soon as possible" and article 78 specifies a right of appeal. See also the International Covenant on Civil and Political Rights (art. 9 (2)), in General Assembly resolution 2200 A (XXI), annex.

arrested on 1 May 2016 and as of time of writing of the report, has been held on an administrative detention order for a period of five months. According to information provided by Addameer, Safadi was arrested and subsequently interrogated over a period of 40 days. After no evidence was found on which to hold Safadi, he was set to be released on 10 June, pursuant to the decision of the Magistrate Court. On the day of his scheduled release, the Defense Minister signed an administrative detention order, for Safadi to be detained for a period of 6 months. Addameer notes that this "exemplifies the practice of issuing an administrative detention order in the absence of adequate evidence and charges against a detainee to keep him or her in detention".[30]

Children in detention

23. Of significant concern is the number of children currently held in detention by Israeli authorities. As of the time of writing, Addameer had documented at least 350 Palestinian minors under the age of 18 currently held in detention by the Israeli authorities.[31] At the end of 2015, the number was at 422, with at least 116 of those between the ages of 12 and 15.[32] The majority of the arrests were related to charges of stone-throwing.[33] As part of the dual legal system in existence in the Occupied Palestinian Territory, Palestinian children arrested in the West Bank are subject to Israeli military law (as are Palestinian adults), while Israeli settlers in the same geographic area are subject to the Israeli civil and criminal legal system. Despite numerous calls for greater attention to the protections that should be afforded children, the practice surrounding the arrest and detention of minors remains extremely problematic. Reports and documentation indicate that parents are often not informed of a child's arrest until several days after the fact. In many cases, confessions are obtained in coercive conditions and are often written in Hebrew, which most Palestinian children cannot read. Children are also often denied access to an attorney during the initial phase of arrest, and many report ill-treatment.[34] Children reported being handcuffed, hand-tied, blindfolded, beaten and subject to solitary confinement.[35]

24. These practices are not only in contravention of basic legal standards, but they fail to take into account the extremely vulnerable position of a young child. The vulnerability of children is well recognized by the international community and the special protections to which children are entitled are enshrined in a number of legal instruments, including the Convention on the Rights of the Child. A 2012 report

[30] Information published by Addameer, available from www.addameer.org/prisoner/hasan-safadi.

[31] Addameer, Statistics, August 2016. Available from www.addameer.org/statistics.

[32] Defense for Children International — Palestine, "No way to treat a child: Palestinian children in the Israeli military detention system", April 2016. Available from www.dci-palestine.org/palestinian_children_in_the_israeli_military_detention_system.

[33] United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), "Children in distress: raising the alarm for 2016 and beyond", briefing note, April 2016. Available from www.unrwa.org/sites/default/files/content/resources/children_in_distress_briefing_note.pdf.

[34] Defense for Children International — Palestine, "No way to treat a child: Palestinian children in the Israeli military detention system".

[35] Department of State of the United States of America, 2015 report on human rights practices in Israel and the occupied territories, available from www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=252929&year=2015#wrapper.

prepared by a team of independent lawyers found Israeli claims that the Convention did not apply beyond the borders of Israel to be "factually and legally unreal".[36] The International Court of Justice, in its advisory opinion on the legal consequences of the construction of a wall in the Occupied Palestinian Territory, found that the Convention, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights do in fact apply.[37] Of the recommendations set out in the "Children in military custody" report, only 2.5 per cent had been implemented as of July 2016.[38]

C. Collective punishment

25. Israeli authorities have resorted to a number of measures, which they employ on a case-by-case basis, that often amount to collective punishment. The measures, enacted in the name of security and often in response to actions carried out by one person or a small group of people, have a significant impact on the daily lives of almost every Palestinian at some point. Road closures, checkpoints and roadblocks restrict the movement of Palestinians to and from work and school, as well for visiting family members and travelling for medical treatment. Home demolitions deprive entire families of a place to live, based on the alleged actions of one individual.

26. Collective punishment refers to the practice of punishing an entire group for the actions of a particular individual. Collective punishment is prohibited under article 33 of the Fourth Geneva Convention and the Human Rights Committee has further noted that the prohibition on collective punishment is non-derogable.[39]

Punitive demolitions

27. In 2014, the Israeli Government reinstituted the use of punitive home demolitions.[40] Since that time, the number of demolitions has been on the rise, with 11 demolitions displacing 85 people reported in 2015, while already, as of July 2016, there had been 16 demolitions, displacing 92 people.[41] Punitive demolitions, the purpose of which is to harm the family members of someone suspected of a crime, are in clear violation of the basic tenets of international law.[42]

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[36] "Children in military custody", June 2012, para. 30. Available from www.childreninmilitarycustody.org.uk/.

[37] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of 9 July 2004, I.C.J. Reports 2004*, paras. 102-113.

[38] Military Court Watch, Monitoring the treatment of children in Israeli military detention, briefing note, July 2016. Available from www.militarycourtwatch.org/files/server/MCW%20BRIEFING%20PAPER%20-%20JUL%202016.pdf.

[39] See General Comment No. 29 (CCPR/C/21/Rev.1/Add.11).

[40] OHCHR, "Punitive demolitions destroy more than homes in occupied Palestinian territory", 28 December 2015. Available from www.ohchr.org/EN/NewsEvents/Pages/PunitivedemolitionsinOPT.aspx.

[41] B'Tselem, Statistics on punitive house demolitions, updated 31 August 2016. Available from www.btselem.org/punitive_demolitions/statistics.

[42] Al-Haq, "Punitive house demolitions", 31 October 2015. Available from www.alhaq.org/advocacy/topics/population-transfer-and-residency-right/983-punitive-house-demolitions.

28. The Human Rights Committee, in its review of the fourth periodic report of Israel, in 2014, also called on the Government to halt its policy of punitive demolitions, noting that it is incompatible with its obligations under the Covenant.[43] In addition to amounting to a prohibited form of collective punishment, punitive demolitions are a violation of the prohibition on destruction of civilian property.[44]

Closures, checkpoints and permits

29. The right to freedom of movement is adversely affected on a regular basis by road closures, checkpoints and burdensome permit regimes that affect entire towns and villages. The practices are increasingly being used in villages and areas that those suspected of attacks call home.[45] As of the end of 2015, the Office for the Coordination of Humanitarian Affairs documented a total of 543 closures in the West Bank. Hebron in particular was subject to such measures, with significantly increased restrictions imposed after a series of demonstrations and related clashes, as well as alleged attacks in the area in November 2015, which resulted in a total of 53 new obstacles deployed, in addition to the 109 already existing obstacles.[46] Israel asserts that these are security measures. However, their sweeping nature and significant impact on the entire Palestinian population of various towns and cities make them not only a violation of the right to freedom of movement,[47] but in many cases also a form of collective punishment.

30. One recent incident is particularly illustrative. On 8 June 2016, in a deplorable act, four Israelis were killed in an attack at a popular shopping area in Tel Aviv. Two Palestinian gunmen were involved and, after the attack, police noted the suspects were from Hebron.[48] In response to the attack, the Israeli Government revoked all 83,000 permits it had granted to residents of the West Bank and Gaza to travel during Ramadan, suspended 204 work permits of individuals in the alleged attackers' extended families and sealed off the suspected attackers' entire hometown.[49]

31. The blockade of Gaza is currently the longest standing measure of collective punishment of the Palestinian people.[50] The blockade, imposed in 2007, has left the vast majority of 1.8 million inhabitants of Gaza unable to leave. The blockade has

[43] See CCPR/C/ISR/CO/4.

[44] Fourth Geneva Convention, article 53.

[45] See Office for the Coordination of Humanitarian Affairs, "Fragmented lives: humanitarian overview 2015", June 2016.

[46] Ibid.

[47] International Covenant on Civil and Political Rights, article 12, Universal Declaration of Human Rights, article 13, Fourth Geneva Convention, article 27 and commentary to article 27, and *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, paras. 135-137.

[48] Peter Beaumont, "Four dead in Tel Aviv market shooting", *The Guardian*, 8 June 2016. Available from www.theguardian.com/world/2016/jun/08/tel-aviv-market-shooting-sarona-complex.

[49] OHCHR, Press briefing note on Yemen and Israel/Occupied Palestinian Territory, 10 June 2016. Available from www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=20082&LangID=E.

[50] A/HRC/24/30, paras. 21-23.

been decried as a measure of collective punishment by both the Secretary-General and the International Committee of the Red Cross.[51]

32. A recent announcement by the Defense Minister provides concerning evidence that these types of measures are likely to continue. In what has been called a "carrot and stick" approach, the Minister proposes to continue using harsh measures such as closures, the increased presence of security forces and demolitions in areas that are home to suspected attackers and, meanwhile, to build infrastructure in areas that are seen by the Israeli authorities as "seeking coexistence". Notably, this primarily implies coexistence with illegal settlements. The Minister reportedly said of the policy that "[i]ts purpose is to continue to give benefits to those who desire coexistence with us and make life difficult for those who seek to harm Jews".[52]

D. Coercive environment and forcible transfer

33. Recent months have seen a significant increase in settlement-related activity, including more government authorization of new buildings, retroactive authorization of construction considered illegal even under Israeli domestic law, demolition of the homes of Palestinians and the continuation of discriminatory planning practices and policies that make it extremely difficult for Palestinians to build. Such policies and practices are particularly prevalent in Area C and East Jerusalem, to such an extent that the Office for the Coordination of Humanitarian Affairs has referred to the situation as a "coercive environment that undermines a Palestinian physical presence and exacerbates the risk of individual and mass forcible transfers".[53]

34. Forcible transfer is clearly prohibited by article 49 of the Fourth Geneva Convention. The same article also prohibits the transfer of the population of an Occupying Power into the occupied territory. Forcible transfer is also defined as a war crime and a crime against humanity in the Rome Statute of the International Criminal Court.[54] "Forcible" in the context of the Rome Statute has been interpreted to mean not only physical force, but may also include "threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment".[55]

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[51] United Nations News Centre, "In Jerusalem and Gaza, Ban urges 'courageous steps' for lasting two-State solution", 28 June 2016, available from www.un.org/apps/news/story.asp?NewsID=54341#.V81iTJN95E4 and International Committee of the Red Cross, "Gaza closure: not another year!", news release No. 10/103, 14 June 2010, available from www.icrc.org/eng/resources/documents/update/palestine-update-140610.htm.

[52] Yossi Melman, "Liberman unveils new 'carrot and stick' policy for West Bank Palestinians", *Jerusalem Post*, 17 August 2016. Available from www.jpost.com/Arab-Israeli-Conflict/Liberman-unveils-new-carrot-and-stick-policy-for-West-Bank-Palestinians-464360.

[53] Office for the Coordination of Humanitarian Affairs, "Fragmented lives: humanitarian overview 2015".

[54] Rome Statute of the International Criminal Court, articles 8.2(a)(vii) and 7.1(d), United Nations, *Treaty Series*, vol. 2187, No. 38544.

[55] International Criminal Court, *Elements of Crimes* (The Hague, 2011). Available from www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf.

35. Bedouin communities in the West Bank are particularly vulnerable, as they are often subject to relocation plans developed by the Israeli Government. Those efforts are based on assertions, for example, that the existing structures and locations are somehow "unsustainable".[56] In order to implement relocation plans, the authorities have demolished Palestinian homes and other structures, often relying on the fact that the structures are built without Israel-issued permits. However, permits are notoriously difficult to obtain, with high application fees, frequent rejections and lengthy processes, all of which combine to form a discriminatory permit regime that makes it nearly impossible for Palestinians to "legally" build. On 8 January 2016, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) noted, in reference to the demolition of Bedouin homes in the West Bank carried out by the Israeli authorities on 6 January, that "[d]emolishing residential structures exacerbates an already coercive environment, driving Bedouin communities off the land they have inhabited for decades".[57]

36. The Office for the Coordination of Humanitarian Affairs has further described the situation in the West Bank, including East Jerusalem, as putting many Palestinian families and communities "at risk of forcible transfer because Israeli practices have created a coercive environment that puts pressure on them to move, mainly through the unavailability of building permits, which are almost impossible to acquire".[58] In a letter signed by the ambassadors to Israel of Belgium, Germany, Ireland, Italy, Norway, Spain, Sweden and Switzerland, the ambassadors criticized Israeli forces for confiscating shelters belonging to a Bedouin community in the West Bank, saying "These confiscations as well as previous demolitions, compounded by the inability of humanitarian agencies to deliver relief items to the affected households, create a coercive environment that potentially pressures them to leave their current sites against their will".[59]

37. The destruction of homes and property is not limited to structures built by Palestinians, but now also includes, with increasing frequency, structures built and funded by international humanitarian assistance. On 16 May 2016, for example, the Israeli authorities demolished seven homes and confiscated materials for three others that had been provided by humanitarian agencies, leaving 49 Palestinian refugees without shelter, 22 of them children.[60] Since the beginning of 2016, according to civil society data, 187 of the structures destroyed or seized by the

[56] Office for the Coordination of Humanitarian Affairs, "At risk of forcible transfer", Monthly Humanitarian Bulletin (May 2016). Available from www.ochaopt.org/content/risk-forcible-transfer.

[57] UNRWA, "UNRWA condemns demolition of the homes of Palestine refugee Bedouin families at risk of forcible transfer; decries desperate humanitarian consequences", 8 January 2016. Available from www.unrwa.org/newsroom/official-statements/unrwa-condemns-demolition-homes-palestine-refugee-bedouins-families.

[58] Office for the Coordination of Humanitarian Affairs, "At risk of forcible transfer", Monthly Humanitarian Bulletin (May 2016).

[59] Peter Beaumont, "Ambassadors protest at Israel's confiscation of West Bank shelters", *The Guardian*, 18 July 2016. Available from www.theguardian.com/world/2016/jul/18/ambassadors-protest-israel-confiscation-west-bank-bedouin-shelters.

[60] Office for the Coordination of Humanitarian Affairs, "Humanitarian Coordinator calls on Israeli authorities to stop destruction of humanitarian aid and respect international law", 18 May 2016. Available from www.ochaopt.org/content/humanitarian-coordinator-calls-israeli-authorities-stop-destruction-humanitarian-aid-and.

Israeli authorities had been provided through donor-funded humanitarian assistance, compared to 108 donor-funded structures destroyed in all of 2015. Destruction of much-needed infrastructure provided through humanitarian aid is in direct violation of Israel's obligations under international law. Article 59 of the Fourth Geneva Convention requires an Occupying Power to facilitate relief for a population in need "by all means at its disposal". Article 55(1) further requires the Occupying Power to ensure the provision of food and medical supplies to the civilian population.[61] If the Occupying Power is not in a position to fulfil that obligation, it has an unconditional obligation to agree to relief schemes.[62]

III. The right to development and the Occupied Palestinian Territory

38. Thirty years ago, the General Assembly adopted the Declaration on the Right to Development.[63] The Declaration, and its subsequent elaborations, state that every human being and all peoples have an inalienable right to economic and social development that is equitable and just, sustainable, participatory and inclusive, non-discriminatory, grounded in the rule of law and fully observant of all human rights and freedoms. The right to development has been recognized as a human right itself, which raises its status to one with universal applicability and inviolability.[64] While the Declaration is not legally binding per se, it encompasses many of the legal rights and obligations — civil, political, economic, social and cultural — that are recognized as binding on all States parties through the various human rights treaties enacted by the international community over the past 70 years.[65] In turn, the Declaration has been expressly incorporated within the 2030 Agenda for Sustainable Development.[66]

39. The Declaration on the Right to Development is particularly relevant to understanding the human rights predicament in the Occupied Palestinian Territory. Among other rights, the Declaration expressly includes the following human rights that are binding in international law:

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[61] Felix Schwendimann, "The legal framework of humanitarian access in armed conflict", in *International Review of the Red Cross: The Future of Humanitarian Action*, vol. 93, No. 884 (Cambridge and New York, Cambridge University Press, December 2011), p. 1001.

[62] Ibid., p. 1002.

[63] Resolution 41/128, annex. The right was reaffirmed in subsequent international human rights instruments, including the Vienna Declaration and Programme of Action (1993).

[64] Declaration on the Right to Development, article 1, para. 1; Arjun Sengupta, "On the theory and practice of the right to development", *Human Rights Quarterly*, vol. 24, No. 4, p. 837 (Baltimore, Johns Hopkins University Press, 2002).

[65] The Declaration on the Right to Development is anchored in the International Covenant on Economic, Social and Cultural Rights (United Nations, *Treaty Series*, vol. 993, No. 14531) and the International Covenant on Civil and Political Rights (United Nations, *Treaty Series*, vol. 999, No. 4668). For a table linking the rights set out in the Declaration to legally binding instruments under international law, see OHCHR, *Frequently Asked Questions on the Right to Development* fact sheet No. 37 (Geneva, 2016).

[66] Resolution 70/1, para. 10.

(a) The self-determination of peoples (art. 1);

(b) The elimination of foreign domination and occupation (art. 5);

(c) The prohibition against discrimination and the flagrant abuse of human rights (art. 6);

(d) The full enjoyment of all human rights and fundamental freedoms, including socioeconomic rights (arts. 6 and 8);

(e) Full sovereignty over one's natural resources (art. 1);

(f) Participatory decision-making in public affairs (arts. 2 and 8).

These rights lie at the core of the binding human rights and humanitarian obligations under international law, which apply in full to the Occupied Palestinian Territory[67]. They establish not only rights for the Palestinian people, but also create obligations for Israel, the Occupying Power, to respect and protect those rights. The Palestinian people's right to self-determination is widely accepted by the international community,[68] and the International Court of Justice has stated that "Israel is bound to comply with its obligations to respect the right of the Palestinian people to self-determination and its obligations under international humanitarian law and international human rights law".[69] While the question of development is necessarily complex in the context of occupation, it is essential that human rights and humanitarian law be interpreted in a way that is consistent with the right to development, regardless of the length of occupation.

40. The Declaration on the Right to Development establishes a rights-based approach to economic growth and social progress. Human rights are to be embedded in all aspects of economic and social development as a necessary precondition to the achievement of real and sustainable progress, expanded capacities and enlarged freedoms for the entire population. Both individuals and peoples are entitled to these rights, and States parties have a responsibility to create the conditions and remove the obstacles to achieve the enjoyment of these rights. Among its core features, the right to development requires both the application of transparent and participatory procedures as well as the substantive realization of equality of opportunity for everyone in their access to basic resources and their socioeconomic rights.[70]

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[67] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, paras. 86-114 and para. 149. These rights are also enumerated in binding human rights treaties, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

[68] See resolution 70/141.

[69] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, para. 149.

[70] Resolution 41/128, annex, article 8, para. 1; Paul Gready et al., "What do human rights mean in development?", in *The Palgrave Handbook of International Development*, Jean Grugel and Daniel Hammett, eds. (Palgrave Macmillan UK, 2016), p. 453.

A. Economic and social development in the Occupied Palestinian Territory

41. The Palestinian economy is without parallel in the modern world. Its territorial components — the West Bank, including East Jerusalem, and Gaza — are separated physically from one other. Its largest geographic entity, the West Bank, has been divided by Israel into an archipelago of small islands of densely-populated areas disconnected from one another by the wall or by settlements, bypass roads connecting the settlements to each other and to the Israeli transportation system, roadblocks, exclusive zoning laws, restricted areas and military no-go zones. Within these areas occupied by Israel, the local political authority is likewise splintered: the Palestinian Authority has limited rule over a part of the fragmented West Bank, Gaza is governed by a separate political authority not accountable to the Palestinian Authority, and Israel has illegally annexed East Jerusalem.[71] Furthermore, Israel has imposed a comprehensive land, sea and air blockade on Gaza since 2007. Within the West Bank, Israel exercises full civil and security authority over "Area C", which makes up over 60 per cent of this part of the territory and completely surrounds and divides the archipelago of Palestinian cities and towns, a hybrid situation that one human rights group has called "occunexation".[72] The Occupied Palestinian Territory lacks any secure transit access, whether by land, sea or air, to the outside world. All of its borders, with one exception, are controlled by Israel.[73] No other society in the world faces such an array of cumulative challenges that includes belligerent occupation, territorial discontinuity, political and administrative divergence, geographic confinement and economic disconnectedness.

42. The Oslo Accords, of 1993, and the Protocol on Economic Relations between the Government of the State of Israel and the Palestine Liberation Organization (the Paris Protocol on Economic Relations, 1994) were meant to be interim arrangements and were considered by Palestine as a diplomatic and economic pathway for Palestinian independence by 1999. During that transitional period, the Oslo Accords left intact the extensive Israeli settlement project and permitted Israel broad authority to act on security concerns throughout the Occupied Palestinian Territory. The Paris Protocol created an economic framework with a significant reliance on Israel for currency, customs-union style trade provisions, foreign exchange arrangements and tax collection capacity that effectively maintained Palestinian dependence on Israel. A final peace settlement between Israel and Palestine has not materialized, and those interim arrangements have now become entrenched. The consequence has been that, while the Palestinian Authority has built much of the administrative and institutional capacity for national governance, it

[71] The Security Council has stated that Israel's annexation of East Jerusalem is contrary to international law, and that East Jerusalem is deemed to be part of the Occupied Palestinian Territory. See Security Council resolution 476 (1980) and resolution 478 (1980).

[72] Association for Civil Rights in Israel, "49 years of control without rights: human rights of the Palestinians in the West Bank and East Jerusalem — what has changed?", 1 June 2016. Available from www.acri.org.il/en/wp-content/uploads/2016/06/49years2016-en.pdf.

[73] The only external border point not directly controlled by Israel is the Rafah crossing between Gaza and Egypt. Rafah is used almost exclusively as a civilian crossing, and not as an economic trading junction. Egypt has kept this crossing closed for much of the past three years.

lacks the necessary economic foundation for sovereign development.[74] Since 2000, the Palestinian economy has experienced a volatile economic growth trajectory. When growth has occurred, it has been judged to be unsustainable because (a) it has been highly dependent upon foreign aid and private consumption of imports,[75] and (b) the Israeli occupation has increasingly separated and shrunk the different regions of the Palestinian territory, creating a dysfunctional economic base deprived of the capacity for autonomous development.[76]

43. The contradictions of attempting to build a sovereign economy under a prolonged occupation, without the realization of genuine self-determination on the foreseeable horizon, have become quite apparent. A stifled and distorted Palestinian economy provides a non-viable foundation for the sustainable and equitable social development of the Occupied Palestinian Territory. Certainly, Palestine has made steady progress in several important social areas, including maternal mortality, levels of literacy and education and vaccination rates. Yet, other key indicators point to a serious situation, with social conditions and living standards stagnating or getting worse:

(a) The Palestinian economy has not advanced. In 2014, Palestinian real gross domestic product (GDP) per capita was at virtually the same level as it was in 1999, with Gaza's real GDP per capita standing at only 71 per cent of its 1999 level;[77]

(b) Unemployment is growing as a social scourge. In 2016, it stood at 27 per cent in the Occupied Palestinian Territory, compared to 12 per cent in 1999; in Gaza, the unemployment crisis is particularly acute, where it has reached 42 per cent, with 58 per cent of its youth (aged between 15 and 29) without work, among the highest rates in the world;[78]

(c) Poverty has been increasing among Palestinians since 2012, with 26 per cent of the population now deemed to be poor, and 13 per cent estimated to suffer from extreme poverty.[79] Food insecurity is endemic: an estimated 2.4 million people

[74] International Bank for Reconstruction and Development/World Bank, "West Bank and Gaza: towards economic sustainability of a future Palestinian State — promoting private sector-led growth" (Washington, D.C., World Bank Group, 2012).

[75] The World Bank estimated that external donor aid to the Occupied Palestinian Territory declined from 32 per cent of gross domestic product (GDP) in 2008 to 6 per cent in 2015, and noted that such a donor-led growth model is unsustainable. See World Bank, "Economic monitoring report to the ad hoc liaison committee" (Washington, D.C., World Bank Group, April 2016).

[76] See International Bank for Reconstruction and Development/World Bank, "West Bank and Gaza: towards economic sustainability of a future Palestinian State — promoting private sector-led growth" and UNCTAD/AP P/2016/1.

[77] In 2014, real GDP per capita income in the Occupied Palestinian Territory (West Bank and Gaza, not including East Jerusalem) stood at $1,737. In 1999, it stood at $1,723. In 2014, Gaza's real GDP per capita income was $971, compared to $1,372 in 1999. All figures are in constant 2004 United States dollars; current (nominal) GDP per capita figures are higher. See data published by the Palestinian Central Bureau of Statistics, available from www.pcbs.gov.ps/Portals/_Rainbow/Documents/e-napcapitacon-1994-2014.htm.

[78] World Bank, "Economic monitoring report to the ad hoc liaison committee" (Washington, D.C., World Bank Group, September 2016).

[79] United Nations Educational, Scientific and Cultural Organization (UNESCO), country programming document for Palestine, 2014-2017.

in the West Bank and Gaza (57 per cent of the population) are projected to require some form of humanitarian assistance in 2016;[80]

(d) The industrial, agricultural and natural resource sectors are steadily shrinking in economic significance and employment size, owing to, inter alia: Israeli restrictions on market access; low confidence among potential investors because of political uncertainty; the significant loss of arable land to the Occupying Power; lack of effective economic planning powers; limited Palestinian control over important natural resources (water, land, stone quarrying, and oil and gas reserves); and the limited access to fishing resources.[81] The economy has become deindustrialized and its ability to export has been undercut by the decline of the agriculture and manufacturing sectors;[82]

(e) The Occupied Palestinian Territory continues to be a captive trading market for Israel, as it has been throughout the occupation: in recent years, about 85 per cent of Palestinian exports have gone to Israel, and it received 70 per cent of its imports from Israel. The restrictions and imbalance in the trading relationship contributed to maintaining a chronic trade deficit in the Palestinian economy of $5.2 billion in 2015, some 41 per cent of GDP;[83]

(f) Symptomatic of the Palestinian Government's precarious economic management powers are the substantial fiscal leakages that the Palestinian Government and the Palestinian economy suffer under the current revenue-sharing and collection agreements with Israel. These arrangements are estimated by the World Bank and the United Nations Conference on Trade and Development (UNCTAD) to cost the Palestinian economy at least $640 million annually (amounting to 5 per cent of GDP);[84]

(g) UNCTAD has estimated that, without the occupation, the economy of the Occupied Palestinian Territory could double its GDP, with significant reductions not only in the unemployment and poverty levels, but also in the chronic trade and budget deficits.[85]

44. Israel, the Occupying Power, effectively controls the economic and social development of the Palestinian territory, but it does so in quite different ways within each region. Measures that amount to violations of the right to development include the blockade of Gaza and the ensuing collapse of its economy, the fragmentation

[80] Office for the Coordination of Humanitarian Affairs, "Humanitarian dashboard: 2nd quarter 2016", 18 August 2016. Available from www.ochaopt.org/content/humanitarian-dashboard-2nd-quarter-2016. UNRWA reported in March 2016 that 70 per cent of the total refugee population in Gaza, over 930,000 people, were dependent on food assistance, dramatically up from 10 per cent in 2000. See www.unrwa.org/newsroom/emergency-reports/gaza-situation-report-137.

[81] See UNCTAD/APP/2016/1. The World Bank acknowledged in 2015 that "the competitiveness of the Palestinian economy has been progressively eroding since the signing of the Oslo accords, in particular its industry and agriculture". See World Bank, "Economic monitoring report to the ad hoc liaison committee" (Washington, D.C., World Bank Group, September 2015).

[82] World Bank, "Economic monitoring report to the ad hoc liaison committee" (Washington, D.C., World Bank Group, September 2016).

[83] See UNCTAD/APP/2016/1. All amounts are in United States dollars.

[84] See World Bank, "Economic monitoring report to the ad hoc liaison committee" (Washington, D.C., World Bank Group, April 2016) and UNCTAD/APP/2016/1.

[85] See UNCTAD/APP/2016/1.

and cantonization of the West Bank, including separation and neglect of East Jerusalem, exploitation and appropriation of Palestinian natural resources, the regime of formal economic dependency, unilateral control over Palestine's external borders, the encumbering of personal and business mobility, restrictions on the use of agricultural lands, limitations on Palestinian fishery, the inequitable revenue sharing and tax collection agreements, and lopsided trade arrangements. The following sections examine the particular nature of Israeli domination of these areas.

Gaza

45. Israel's continued occupation of Gaza is maintained through an extensive military, economic and social blockade of the territory, which reinforces its separation from the world and the rest of the Occupied Palestinian Territory. As a form of collective punishment imposed upon an entire population, the blockade is contrary to international law.[86] In 2007, when Israel imposed the comprehensive blockade, the economy in Gaza had already been teetering owing to Israeli closures that had begun in the early 1990s, but it has since collapsed, along with the territory's living standards. The misery of the blockade for the population of Gaza has been compounded by the three escalations of violence between Israel and Gaza, in 2008-2009, 2012 and 2014, which killed approximately 2,500 Palestinian civilians, caused tens of thousands of injuries, displaced hundreds of thousands and inflicted extensive damage to Gaza's infrastructure. All reconstruction materials that enter Gaza must be approved by Israel, which has either limited or banned the importation of such necessary items as concrete, wood and other building materials, making the efforts to rebuild slow, difficult and costly.[87] In 2016, two years after the most recent hostilities ended, only 45 per cent of Gaza's energy needs are being met, causing between 16 and 18 hours of daily power cuts; 70 per cent of Gaza's population only have piped water supplies for between 6 and 8 hours, every 2 to 4 days; and 65,000 displaced Gazans from the 2014 escalation of hostilities still do not have reconstructed homes. An estimated 80 per cent of the population depends upon humanitarian aid to some degree for survival. On a more positive note, many of the damaged or destroyed hospitals and schools from the most recent conflict have been repaired or rebuilt, with funding from the international community.[88]

46. Over the past decade, Gaza has undergone a process of "de-development", with Israel enforcing a policy of maintaining Gaza at a level of essential humanitarian requirements and little more.[89] A major study by the United Nations in

[86] A/69/347, paras. 30-34 and A/HRC/25/40, paras. 24-30. The Special Rapporteur notes the conclusion of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident ("Palmer Report") (September 2011) which held that the blockade is lawful, but finds that the observations of the group of United Nations independent human rights experts which criticized the conclusion of the Palmer Report to be a more persuasive reading of international law. Report available from: www.un.org/News/dh/infocus/middle_east/Gaza_Flotilla_Panel_Report.pdf.

[87] Gisha — Legal Center for Freedom of Movement, "Two years later: the long road to reconstruction and recovery" (2016). Available from www.gisha.org/UserFiles/File/publications/2_years_later/Reconstruction_EN.pdf.

[88] Office for the Coordination of Humanitarian Affairs, "Gaza: two years after", 26 August 2016. Available from www.ochaopt.org/sites/default/files/gaza_war_2_years_after_english.pdf.

[89] Sara Roy, *The Gaza Strip: The Political Economy of De-development*, 3rd ed. (Washington, D.C.,

2012 questioned whether, under then-current conditions, Gaza would even be a sustainable place to live by 2020.[90] In 2015, the World Bank reviewed what it called "the staggering cost of violence and blockade on Gaza's economy and living standards". The World Bank, after noting the grim levels of unemployment and poverty, stated that the approximately 70 per cent of Palestinians who work in the shrunken private sector in Gaza earn an average monthly salary of $174, less than the legal minimum wage of around $400. While Israel has recently allowed a limited amount of goods produced in Gaza to be traded to the West Bank and Israel, exports from Gaza are at only 11 per cent of their level before the 2007 blockade was imposed. The World Bank found that Gaza's GDP between 2007 and 2012 would have been 51 per cent higher had it not been for the combined effects of the blockade and armed conflict. The economy is now dependent for about 90 per cent of its GDP on expenditures by the Palestinian Government, the United Nations and other external remittances and donor projects.[91]

47. With respect to agriculture, Israel has unilaterally decreed a strip of land 300 m within Gaza along the border fence as a prohibited or restricted buffer zone, thus inhibiting the use of approximately 35 per cent of Gaza's farming land. Israel has also imposed tight restrictions on the maritime zone that Gazan fishermen can utilize, with as little as 3 nautical miles available for fishing. Even within stated limits, fishermen often face arbitrary arrest, confiscation of equipment and have even been shot at.[92] The restrictions have stunted the capacity of those two sectors to generate economic growth and employment.[93]

48. The depleted economy has resulted in widespread social anguish for the Palestinians in Gaza. The World Bank reported in May 2015 that "the quality of life for the large majority of Gaza's citizens is hardly bearable".[94] Very few Gazans are able to obtain permission from Israel or Egypt to travel outside of the Strip, whether for business, family, health or educational reasons. As a consequence of the confinement and the armed conflicts, the World Bank stated in the same report that even the sky-high poverty and unemployment rates "fail to portray the degree of suffering of Gaza's citizens due to poor electricity and water/sewage availability, war-related psychological trauma, limited movement, and other adverse effects of wars and the blockade". The water aquifer, which supplies Gaza's drinking source, is vastly overdrawn and only 5 to 10 per cent of the aquifer water is still drinkable. The lack of reliable electricity not only harms the economy but also seriously degrades the quality of everyday life. Most of Gaza's sewage is dumped into the Mediterranean sea untreated, an estimated 100 million litres daily, because of

Institute for Palestine Studies, 2016).

[90] UNRWA, "Gaza in 2020: a liveable place?" (Jerusalem, Office of the United Nations Special Coordinator for the Middle East Peace Process, 2012).

[91] World Bank, economic monitoring reports to the ad hoc liaison committee (May 2015, September 2015 and April 2016).

[92] Al Mezan Center for Human Rights, "Israeli violations against Palestinian fishermen in the naval part of the access restricted area", first quarterly report, 2016, pg. 11.

[93] See Gisha, "Ten years later". Available from features.gisha.org/ten-years-later/; see also Diakonia, "Within range: an analysis of the legality of the land 'buffer zone' in the Gaza Strip" (Jerusalem, Diakonia International Humanitarian Law Programme, 2011).

[94] World Bank, "Economic monitoring report to the ad hoc liaison committee" (Washington, D.C., World Bank Group, May 2015).

unrepaired damages to the treatment plants, lack of electricity to run them to capacity and failing infrastructure, which raises the risk of infectious diseases.[95] The quality of health services continues to deteriorate, with significant shortages of essential drugs and disposables, the non-payment or underpayment of medical staff salaries and compromised health-care service delivery owing to prolonged fuel cuts. This is alarming in the face of the thousands of Gazans with major physical disabilities and the estimated 20 per cent of the population who may have acquired mental health problems in the aftermath of the recent conflicts.[96] Observing the downward slide of living conditions, one leading human rights organization has stated that "life in Gaza is like life in a collapsing third-world country, a reality that is not the result of a natural calamity, but purely man-made".[97]

The West Bank

49. The economy of the West Bank is not at the dire level of Gaza's, but nor is it flourishing. Between 1999 and 2014, the economy only grew by 14 per cent in real terms, in large part because of the fragmentation of the territory under the occupation and the pervasive political and economic uncertainty regarding the Occupied Palestinian Territory's future.[98] The current stage of the fragmentation can be traced to 1995, when the Oslo II Accords divided the West Bank into three areas (and illegally annexed East Jerusalem):

(a) Area A, which consists of the principal Palestinian cities and towns (except for parts of Hebron), and amounts to 18 per cent of the West Bank; it is under the civil and security governance of the Palestinian Authority, although Israel does conduct regular security intrusions with or without coordination with the Palestinian Authority;

(b) Area B, which comprises about 400 Palestinian villages and adjacent farmland, and amounts to 22 per cent of the West Bank; it is under Palestinian civil authority, but exclusive Israeli security control. The vast majority of the 2.4 million West Bank Palestinians live in Areas A and B;

(c) Area C, encompassing 60 per cent of the West Bank, is under full Israeli civil and security control. Area C contains about 225 Israeli settlements and between 370,000 and 400,000 settlers, along with about 180,000 Palestinians. Area C completely surrounds the Palestinian communities in Areas A and B.

50. In the subsequent two decades since Oslo II, the division has become ever deeper. All Palestinian travel and economic trade that requires crossing between the three Areas, to Israel or to the outside world, is subject to Israeli security arrangements. Although the Palestinian Authority has some civil jurisdiction in

[95] Ibid.

[96] See Office for the Coordination of Humanitarian Affairs, "Humanitarian dashboard: 2nd quarter 2016", 18 August 2016, available from http://www.ochaopt.org/content/humanitarian-dashboard-2nd-quarter-2016, and "Gaza two years on: the impact of the 2014 hostilities on the health sector", Monthly Humanitarian Bulletin (June 2016), available from www.ochaopt.org/content/gaza-two-years-impact-2014-hostilities-health-sector.

[97] B'Tselem, "Reality check: almost fifty years of occupation", 5 June 2016. Available from www.btselem.org/publications/201606_reality_check.

[98] In 2014, real GDP per capita income of the West Bank stood at $2,269. In 1999, it was at $1,948. Palestinian Central Bureau of Statistics, Statistical abstract of Palestine.

Areas A and B, all major military, security and economic decisions for the occupied territory rest with Israel. Meanwhile, Israel has financially and administratively devolved virtually all of the West Bank economic and social governance functions to the Palestinian Authority, funded partly by the donor community.

51. Area C is vital to the well-being of the Palestinian economy, as it is endowed with minerals and stone quarrying, productive farmland, the potential for tourism, telecommunications and new housing, and the contiguous territory required for freedom of mobility within the West Bank. The World Bank has estimated that Palestinian GDP could have grown by 35 per cent over existing levels — $3.4 billion (in 2011 United States dollars) — and Palestinian employment would similarly have increased by 35 per cent were it not for Israel's restrictions on Palestinian access to Area C.[99] Yet, rather than integrating Area C with the rest of the West Bank to prepare Palestine for sustainable independence, Israel has instead treated Area C as its own economic and political hinterland, and as the main geographic space for its illegal settlements. Despite clear prohibitions in international humanitarian law against pillage by the Occupying Power, Israel has been exploiting the natural resources in Area C for its own benefit, including quarries, Dead Sea minerals and water.[100]

52. Israel has unilaterally assigned 70 per cent of Area C for its settlements, their adjacent lands and their extensive road, military and security network; all of this is off-limits to Palestinian development. It has also created a comprehensive planning regime to facilitate the confiscation of West Bank land and the expansion of the Israeli settlements. The planning regime excludes any Palestinian participation or substantive regard for their interests. The consequences are that, in Area C, Palestinians have less than 1 per cent of the land for construction, the vast majority of building permit requests by Palestinians for housing and infrastructure are denied, Israeli military demolitions of Palestinian homes are frequent and growing, and thousands of Palestinians — many of them Bedouins — are being forcibly transferred from their homes and traditional lands.[101] As one human rights organization has observed, "tens of thousands of hectares, including pastureland and farmland, have been seized from Palestinians over the years and generously allocated to settlements ... All lands allocated to settlements have been designated closed military zones which Palestinians may not enter without a permit".[102] This separate and unequal development in the West Bank, and particularly in Area C, has led to the creation of two starkly different legal, economic and political universes within one territory, with Israeli settlers enjoying a vastly superior system of laws,

[99] Orhan Niksic, Nur Nasser Eddin and Massimiliano Cali, *Area C and the Future of the Palestinian Economy* (Washington, D.C., International Bank for Reconstruction and Development/World Bank, 2014).

[100] Fourth Geneva Convention, articles 33 (2), 47 and 53; B'Tselem, *Acting the Landlord: Israel's Policy in Area C, the West Bank* (Jerusalem, 2013).

[101] See Orhan Niksic and others, *Area C and the Future of the Palestinian Economy*; Diakonia, "Planning to fail: the planning regime in Area C of the West Bank — an international law perspective" (Jerusalem, Diakonia International Humanitarian Law Resource Centre, 2013); and Office for the Coordination of Humanitarian Affairs, "Increase in West Bank demolitions during July-August", Monthly Humanitarian Bulletin (August 2016). Available from www.ochaopt.org/content/increase-west-bank-demolitions-during-july-august.

[102] B'Tselem, "Reality check: almost fifty years of occupation".

roads, judicial systems, personal mobility, security, economic opportunities, civil and political rights and living standards than the West Bank Palestinians among whom they live. Some informed observers have recently speculated as to whether Israel is preparing to formally annex Area C,[103] with the Government of Israel having already prepared the ostensible legal basis for such a claim.[104]

East Jerusalem

53. In recent years, East Jerusalem has become increasingly detached from its natural economic and social connections to the rest of the West Bank through Israel's construction of a ring of settlement blocs and the wall. It has also suffered as a result of long-term neglect by the Israeli Municipality of Jerusalem. After Israel's annexation of East Jerusalem and adjacent parts of the West Bank in 1967, it built 12 settlements on confiscated land in order to create a physical barrier between the city and the rest of the West Bank and to manufacture a sovereign claim over East Jerusalem. In 2014, East Jerusalem's population consisted of 315,000 Palestinians and 210,000 Israeli settlers. Human rights organizations have pointed out that Israel has sought to discourage Palestinian population growth in Jerusalem through a variety of discriminatory planning, social services and residency rights policies.[105]

54. The physical isolation of East Jerusalem has meant that its traditional role as the mercantile and trading centre for the West Bank has been significantly reduced. In 2013, a study by UNCTAD noted that the wall had created an estimated direct economic loss of over a billion dollars to Palestinian Jerusalemites since its construction, with a further estimated adverse impact of $200 million annually in lost economic opportunities. As reported by UNCTAD, "occupation has affected the economy of East Jerusalem at multiple levels, including the labour market, product market, trade and investment", resulting in the city's declining contribution to Palestinian GDP. Only 13 per cent of East Jerusalem is designated for Palestinian housing, compared to triple that area assigned for Israeli settlers.[106]

55. Socially, Palestinian East Jerusalem has been largely ignored by the Municipality and living standards are far below those in West Jerusalem and in the Israeli settlements in East Jerusalem. East Jerusalem's infrastructure has been neglected over the years and is in poor shape, with a failing road system, a lack of public parks and serious deficiencies in the public transportation system, emergency services, water, garbage collection, policing and street lighting, with some

[103] Al-Monitor, "Is Israel annexing West Bank Area C?", 14 August 2016. Available from www.al-monitor.com/pulse/originals/2016/08/oslo-accords-area-c-annexation-economic-development-settlers.html.

[104] See "Report on the Legal Status of Building in Judea and Samaria" (Jerusalem, June 2012). Available from http://israelipalestinian.procon.org/sourcefiles/The-Levy-Commission-Report-on-the-Legal-Status-of-Building-in-Judea-and-Samaria.pdf; Israel Ministry of Foreign Affairs, *Israeli Settlements and International Law*. Available from www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/israeli%20 settlements% 20and%20international%20law.aspx.

[105] See B'Tselem, "Reality check: almost fifty years of occupation"; see also Jerusalem Institute for Israeli Studies, *Statistical Yearbook* (2016), table III/4, available from www.jiis.org.il/.upload/yearbook/2016/shnaton_C0416.pdf.

[106] UNCTAD, "The Palestinian economy in East Jerusalem: enduring annexation, isolation and disintegration" (Geneva, 2013).

Palestinian neighbourhoods still not connected to the municipal sewage system.[107] Alarmingly, 82 per cent of Palestinian Jerusalemites in 2014 were living below the poverty line, which is three times the level of Israeli Jerusalemites, and 6 per cent higher than in 2013.[108] The construction of the wall left approximately 80,000 Palestinian Jerusalemites on its easterly side and they must now travel through checkpoints to access work and social services in the city; while they still pay municipal taxes, many of them receive very little, if any, basic services.[109]

B. Assessing Israel's respect for the right to development in the Occupied Palestinian Territory

56. An Occupying Power that is administrating an occupied territory in a manner consistent with the right to development would ensure that the occupation complied fully with the range of international legal principles and obligations set out in the right to development. In particular, the Occupying Power would respect and encourage the right to self-determination. It would treat the territory as an integral whole. It would be dedicated to returning the entire territory to the sovereign power, that is to say, the people of the occupied territory, as soon as security and order permitted. It would actively assist in the creation of an effective sovereign administration to assume authority. It would make no sovereign claim on any part of the territory, nor would it transfer any of its civilian population into the occupied territory. During the occupation, it would administer the territory in good faith and in the interests of the protected population as a trustee and usufructuary, and it would respect their laws, public buildings and infrastructure, political order, economy, property regime, cultural customs and social structure. It would encourage the development of the territory's sovereign economy by allowing it to fully flourish within its potential, and it would refrain from imposing any discriminatory economic practices or unnecessary barriers. It would not plunder, enrich itself or create an economic dependency. It would recognize that the natural resources of the occupied territory belong to the sovereign power, it would act to preserve them and it would only utilize those resources that are truly necessary to effectively administer the occupation while it lasts. It would secure and promote the full enjoyment of human rights, subject only to those restrictions absolutely necessary to protect security and public life. It would not tolerate, let alone inflict, humanitarian suffering. It would prohibit discriminatory laws, practices and treatment. In addition, as much as possible, the Occupying Power would encourage participatory decision-making by the protected population, as a vital step to restoring political power to the sovereign power.

57. Israel's occupation over the past 49 years has been seriously deficient in its respect for the legal principles and obligations embedded in the right to

[107] See Association for Civil Rights in Israel, "East Jerusalem 2015: facts and figures", available from www.acri.org.il/en/wp-content/uploads/2015/05/EJ-Facts-and-Figures-2015.pdf; see also Jerusalem Institute for Israeli Studies, "Explosive reality and proposals for de-escalation", available from www.jiis.org/.upload/East Jerusalem summary_Sept24_2015_Final.pdf.

[108] Jerusalem Institute for Israel Studies, *Statistical Yearbook* (2016), table 6.1.

[109] See UNCTAD, "The Palestinian economy in East Jerusalem: enduring annexation, isolation and disintegration"; see also Association for Civil Rights in Israel, "Ten years of unfulfilled promises in East Jerusalem", available from www.acri.org.il/en/2015/08/09/ej-10years/.

development. Fundamentally, Israel has obstructed the Palestinian people's right to self-determination by a range of measures. It has illegally annexed East Jerusalem. It has transferred approximately 570,000 Israeli civilians to live in State-sponsored settlements in occupied territory. It has separated Gaza's economy and people from the rest of the Occupied Palestinian Territory. It has treated much of the West Bank as its own sovereign land for economic and demographic purposes. The duration of the occupation has lasted well beyond any reasonable length for any Occupying Power acting in good faith. The diminished geographic territory available to Palestinians is directly linked to Israel's extensive and expanding settlement project, including its network of highways, adjacent lands and extensive military-security apparatus; indeed, without Israel's settlement project, there would be no rationale for the continuing occupation.

58. In turn, the entrenched occupation and its denial of self-determination has bred conditions that lead to a host of other human rights violations, such as widespread food insecurity, the denial of building permits and the destruction of housing, the confiscation of property, the ongoing imposition of collective punishment, arbitrary military raids, a punitive court and detention system and a humanitarian crisis in Gaza. One of the most serious human rights violations has been Israel's entrenchment of a colonial-like regime in the Occupied Palestinian Territory, with two separate and unequal systems as regards laws, roads, justice regimes, access to water, social services, freedom of mobility, political and civil rights, security and living standards. Taken together, Israel has reneged on its obligations to uphold, in the Occupied Palestinian Territory, the right to development and the right to the full and equal enjoyment of all human rights by the Palestinian people.

59. While the Palestinian Government has some limited planning and investment jurisdiction, its powers are subordinate to Israel's overriding ability to control or veto all major economic decisions in the Occupied Palestinian Territory. Israel's discriminatory planning regime, particularly in East Jerusalem and Area C, minimizes or excludes Palestinian participation. The economy has been functioning well below its capacity and potential and remains deeply dependent upon international donor funding. Many international agencies ascribe the Palestinian economy's weak performance primarily to the occupation and its many barriers. The social consequences of the besieged Palestinian economy are dire: very high unemployment rates, widespread poverty, crumbling infrastructure, significant housing shortages, low standards of living and, in Gaza, widespread misery. Rather than the development of a viable economic base as a necessary path to realizing self-determination and satisfying the right to development, the occupation is instead deepening and the horizon for creating a sovereign economy is vanishing.

IV. Recommendations

60. The Special Rapporteur recommends that the Government of Israel bring a complete end to the almost 50 years of occupation of the Palestinian territories occupied since 1967. The Special Rapporteur also recommends that the Government of Israel take the following immediate measures:

(a) Ensure that domestic legislation is in line with international standards as described in the Basic Principles on the Use of Force and Firearms

by Law Enforcement Officials, and is rigorously applied accordingly to those standards;

(b) Conduct thorough, effective, independent and impartial investigations in all instances where the use of lethal or excessive force or the commission of unlawful acts are alleged against Israeli security forces, so as to ensure genuine accountability;

(c) Immediately end the practice of administrative detention and the use of secret evidence, and release or charge all detainees;

(d) Introduce effective measures to reduce the number of children in detention and ensure that any detentions are fully compliant with the protections contained in the Convention on the Rights of the Child and other applicable legal instruments;

(e) Immediately end the practice of collective punishment in all its forms, including punitive demolitions and unjustified restrictions on freedom of movement;

(f) Immediately end the practice of forcible transfer and the destruction of homes and property, including those of Palestinian Bedouin communities.

61. With respect to the international legal obligations contained within the Declaration on the Right to Development, the Special Rapporteur recommends that the Government of Israel:

(a) Allow for freedom of movement of people and goods throughout the Occupied Palestinian Territory;

(b) End the blockade of Gaza and lift all restrictions on imports and exports, with due consideration to justifiable security concerns;

(c) Allow the Palestinian Authority to assume security control in Area B and civil and security control in Area C so as to end the geographic fragmentation of the Occupied Palestinian Territory;

(d) Take meaningful steps to encourage a balanced trading relationship with the Occupied Palestinian Territory, including measures that will enhance the productive capacity of Palestinian manufacturing and resource development;

(e) Immediately end the practice of utilizing the natural resources of the Occupied Palestinian Territory for its own benefit;

(f) Remove the wall and fully compensate for the economic damages that it has caused;

(g) End the punitive practice of withholding the indirect taxes collected for the benefit of the Palestinian Government;

(h) Fully implement the international legal obligations contained in the Declaration on the Right to Development.